IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 34921 of 2007(G)

OS.790/2007 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

K.LEELA, W/O.K.R.PANKAJAKSHA MENON,
AGED ABOUT 68 YEARS, "SOWPARNIKA"
MALLAPPILLIL, PANANGAD, KUMBALAM VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.T.V.GEORGE

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE SECRETARY
TO FINANCE DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. SRI.CHANDRASEKHARAN,
S/O.NEELAKANDAN NAIR, KIZHUVANA VEETTIL,
THEKKUMBHAGAM KARA, KANAYANNUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34921 of 2007

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Dated this the 27th day of November, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the Munsiff, Ernakulam in O.S.No.790 of 2007 regarding the court fee and jurisdiction. Prayer 'C' in the plaint is for recovery of possession of 1 1/2 cents of property on the strength of title. Defendant in paragraph 12 of the written statement contended that the plaintiff is bound to value the property on the basis of the market value of the property and that if the plaint schedule property is valued on the basis of the market value of the property, the suit will not lie in the Munsiff's Court. On the basis of this contention, an issue was raised and the court in order to determine the correctness of the court fee had directed issuance of a Commission invoking its power under Section 19 of the Court Fees Act. When the court finds that a Commission is necessary, the Court Fee Act empowers to do so. Question whether an

extent of 1 1/2 cents of property is to be valued under Section 7 (2) or Section 7(3) of the Court Fees Act is a matter which the Commissioner has to submit on the basis of the nature of land after inspection of the property.

2. Therefore, I do not find any illegality and hence, decline to interfere with the decision of the court below. But I make it clear that the plaintiff in the suit must be permitted to file objection if any, to the Commissioner's plan and report and also adduce evidence in support of her contention that it is an agricultural land. I make it clear that if it is agricultural land, it will be Section 7(2) of the Court Fees Act that will come into play or it comes under Section 7(3)(A) of the Court Fees Act.

Writ Petition is disposed of with the above observation.

M.N.Krishnan,
Judge.

ess 27/11